

1 Honorable Marsha J. Pechman
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COINLAB, INC., a Delaware Corporation

10 NO. 2:13-cv-777-MJP
11 Plaintiff,

12 v.
13 Mt. GOX KK, a Japanese corporation, and
14 Defendants.

15 Note for Motion: January 29, 2015
16

I. INTRODUCTION

Plaintiff CoinLab, Inc. (CoinLab) moves that the Court enter a temporary restraining order (TRO) enjoining Defendant Tibanne KK (Tibanne) from dissipating its assets in the United States in an attempt to render itself judgment-proof. Tibanne has a demonstrated history in this Court and others of skirting the authority of United States Courts, including attempting to liquidate Tibanne while CoinLab's claims are pending, failing to comply with the requirements of this Court's prior TROs. Now, CoinLab has learned that Tibanne imminently intends to sell its domain, 'bitcoins.com,' see Declaration of Peter Vessenes, which may represent a significant portion of its assets. The sale of Tibanne's assets would immediately and irreparably harm

26 PLAINTIFF'S MOTION FOR TEMPORARY
27 RESTRAINING ORDER - 1
(NO. 2:13-CV-777-MJP)

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1 CoinLab. If Tibanne is permitted to liquidate its assets outside the protections of
 2 bankruptcy, then it will render itself judgment-proof and effectively prevent CoinLab
 3 from ever obtaining relief for the claims it brings in this litigation.

4 II. FACTS AND PROCEDURAL BACKGROUND

5 The court is familiar with the history of the present litigation and the previous
 6 entry of the Temporary Restraining Order. Briefly, CoinLab brought suit against
 7 Defendants MtGox and Tibanne, Japanese corporations, for breach of an agreement
 8 giving CoinLab an exclusive license to use Defendants' software and other intellectual
 9 property in providing digital currency exchange services in the U.S. and Canada. Dkt.
 10 #1. Prior to filing for bankruptcy protection, MtGox was a Bitcoin exchange and
 11 financial services business. *Id.* Tibanne is MtGox's parent corporation and owns 88
 12 percent of MtGox. Dkt. # 88 (Exhibit A).

13 MtGox – but not Tibanne – filed for bankruptcy protection in Japan and then
 14 filed for recognition in the U.S. Bankruptcy Court for the Northern District of Texas
 15 pursuant to Chapter 15 of the US Bankruptcy Code. Dkt. ## 42-8; 37. The bankruptcy
 16 court in Texas concluded that it had jurisdiction over the MtGox bankruptcy and an
 17 automatic stay of all United States litigation against MtGox took effect pursuant to
 18 section 362 of the Bankruptcy Code. Dkt. #42-10 at 3; Dkt. #37. MtGox then moved
 19 for a stay of litigation against Tibanne, which was granted on April 30, 2014. Dkt. #62.
 20 The court ordered that Tibanne secure counsel with 30 days or face sanctions.
 21 Concurrently with the stay, the Court permitted Baker Mackenzie to withdraw on behalf
 22 of MtGox and Tibanne, and ordered that Tibanne obtain new counsel within 30 days or
 23 face sanctions. Dkt. # 61. No counsel appeared on behalf of Tibanne until August 11,
 24 2014. Dkt. #76.

1 Temporary Restraining Orders

2 When Tibanne publicly announced its intent to dissipate valuable assets,
3 including selling off the valuable domain name "bitcoins.com," CoinLab filed a Motion
4 for a Temporary Restraining Order. Dkt. ## 65-67. On July 22, 2014, the court
5 granted relief from the stay and entered a TRO imposing notice requirements on both
6 defendants, requiring preservation of assets, and imposing other restrictions to prevent
7 Tibanne from rendering itself judgment-proof and effectively outside the authority of
8 this court. Dkt. #69.

9 The CEO of Tibanne personally acknowledged receipt of the Motion and TRO,
10 but made no apparent effort to comply. Dkt. ## 73-1, 73-2. News reports subsequent
11 to the entry of the TRO indicated that Tibanne elected to proceed with the sale of its
12 domain names privately, rather than through public auction. Given these
13 developments, CoinLab moved to extend the TRO on August 4. Dkt. # 74. Tibanne
14 again did not appear and the court extended the TRO until August 19. Dkt. #75. The
15 court further ordered a show cause hearing and required counsel for the parties to
16 appear in person in court on Tuesday, August 12. Tibanne moved for a continuance on
17 August 11, but declined to stipulate to a commensurate extension of the TRO. Dkt.
18 #77, 81. The court continued the show cause hearing to Thursday, August 14.

19 At the August 14 show cause hearing, Tibanne was represented by Lance
20 Reich from the Miller Nash firm. MtGox did not appear at the hearing. Tibanne again
21 declined to stipulate to extending the TRO. CoinLab moved for a 14-day extension of
22 the TRO, Dkt. # 88, but ultimately withdrew this motion and filed a motion for relief
23 from stay. Dkt. # 97. The Court granted the motion for relief from stay on October 28,
24 2014, finding CoinLab's claims persuasive that Tibanne is capable of litigating its case

despite the ongoing Mt. Gox bankruptcy proceedings, and that maintaining the stay would allow Tibanne to continue sell assets for two to three years while Mt. Gox's bankruptcy proceedings were pending. Dk. # 106.

4 Tibanne's Financial Difficulty and Continued Liquidation of Assets

5 On December 10, 2014, Tibanne's counsel – Novack and Macey in Illinois, and
 6 local counsel Miller Nash – moved to withdraw as counsel due to non-payment of bills
 7 by Tibanne. Dkt. # 110. On January 6, 2015, the Court granted the motion to withdraw
 8 and ordered Tibanne to retain new counsel within 30 days. Dkt. # 113. The Court
 9 instructed CoinLab to file a motion for entry of default judgment pursuant to Fed. R.
 10 Civ. P. 55 if no counsel appears on Tibanne's behalf in this time. *Id.* Presently, no new
 11 counsel for Tibanne has appeared and Plaintiffs have heard nothing from Tibanne or
 12 any prospective and current counsel. See Townsend Decl. at ¶ 2.

13 At the same time as Tibanne is resuming its ongoing failure to comply with
 14 these court proceedings, Tibanne is actively continuing to dissipate its assets. Tibanne
 15 owns over 700 domain names and the intellectual property behind the MtGox bitcoin
 16 exchange, all of which it is systematically liquidating. Dkt. ## 65, 66-2; see also Ex. 4
 17 to Townsend Decl. CoinLab has recent information that, as of January 26, 2015,
 18 Tibanne is actively attempting to sell off its valuable domain name "bitcoins.com." See
 19 Townsend Decl. at Ex. 1, 2 (demonstrating ownership of bitcoins.com by Tibanne); Ex.
 20 3 (statement on bitcoins.com that "bitcoins.com is for sale"). See also Vessenes
 21 Declaration at ¶ 3 (offer of sale as of January 26, 2015). 'Bitcoins.com' may represent
 22 a significant portion of Tibanne's assets.

23 If Tibanne is permitted to liquidate its assets outside the protections of
 24 bankruptcy, then it will render itself judgment-proof and effectively prevent CoinLab

1 from ever obtaining relief for the claims it brings in this litigation.

2 III. AUTHORITY

3 Pursuant to Fed. R. Civ. P. 65(b) and Local Civil Rule 65(b), the Court may
 4 issue a temporary restraining order without notice where immediate and irreparable
 5 injury, loss, or damage will result to the movant before the adverse party can be heard
 6 in opposition. Fed. R. Civ. P. 65(b). A temporary restraining order may be imposed for
 7 up to 14 days. Fed. R. Civ. P. 65(b)(2). Where a plaintiff can show that the
 8 defendants have a history of violating court orders, an ex parte temporary restraining
 9 order may be warranted. *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1131 (9th
 10 Cir. 2006). Even if the Defendant could be reached, if it is “fruitless” to provide such
 11 notice, a Rule 65(b) order may issue. *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322
 12 (7th Cir. 1984).

13 A temporary restraining order is proper here. Tibanne is unrepresented by
 14 counsel and there is no indication that Tibanne intends to comply with the Court’s
 15 order to obtain representation by February 5, 2015. See Dkt. # 113. Tibanne has a
 16 sustained history of skirting the authority of US courts, and Tibanne intends to proceed
 17 with the sale of ‘Bitcoins.com’ without regard to CoinLab’s rights. Moreover, harm to
 18 CoinLab is imminent: CoinLab has information that as of January 26, 2015, “the owner
 19 of Bitcoins.com is extremely motivated to sell and will consider all offers...” Vessenes
 20 Decl. at ¶ 3. ‘Bitcoins.com’ may represent a significant portion of Tibanne’s assets.¹
 21 Tibanne should not be allowed to effectuate self-help relief by selling its assets while
 22 pending claims remain against it in this forum.

23 If the Court allows Tibanne to proceed with the sale of these assets, Tibanne

24 ¹ Verification of the magnitude of Tibanne’s assets is not possible until Tibanne
 25 complies with the TRO.

1 can prevent CoinLab from obtaining any relief in this lawsuit. Tibanne rendering itself
2 judgment-proof will irreparably and immediately harm CoinLab by exterminating
3 CoinLab's right to a remedy for MtGox's and Tibanne's breach of its exclusive
4 licensing agreement. This Court has twice previously acknowledged the propriety of
5 entering an order preventing Tibanne's dissipation of assets. Dkt. ## 69, 75. This
6 Court should do so again.

7 **IV. CONCLUSION**

8 For the reasons stated above, CoinLab requests that the Court enter a
9 temporary restraining order preventing Tibanne from dissipating its assets for 14 days.

10 DATED this 29th day of January, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2015 electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Jamie Telegin
Jamie Telegin, Legal Assistant

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